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*Debbie Viets*

## THE POLITICAL REALITY OF PRISONS

THIS PAPER EXAMINES the political reality of prisons in the United States respecting society at large and emphasizing the political meanings of crime and punishment for minority groups. Any meaningful study of policies of punishment must be set in a framework of political concerns, for the policies themselves have a functional dependence on the given social and political order. In the United States, where conflicts between diverse interest groups are a fact of life, the politicality of justice is inevitable. Dahrendorf has noted that power is the basic characteristic of social organization: “. . . in every social organization some positions are entrusted with a right to exercise control over other positions in order to ensure effective coercion; it means, in other words, that there is a differential distribution of power and authority.”<sup>1</sup>

Crime in the United States, therefore, must be discussed in the context of the implicitly political choices concerning the distribution of wealth and power and how these choices affect opportunities for various social groups. Punishment must be examined as a political response to actions which threaten the *status quo*. In *The Social Reality of Crime*, Quinney offers several propositions about the nature of the relationship between power and the definition of crime and the consequent application of sanctions which are critical to the framework of this study. First, he suggests that crime is a definition of human behavior created by authorized agents in a politically organized society and describes any conduct that conflicts with the interests of the power-holding segments of the society shaping public policy. Secondly, criminal definitions are applied by the segments of the population which have power to shape the enforcement and administration of criminal law. To be more precise, power may be defined as the ability of one segment of the population to determine the behavior of other persons and groups in the society.<sup>2</sup> Quinney's book also makes the

important point that the political nature of justice is a result not only of conflict between diverse interest groups, but is also affected by the interests of the government itself. That is, in any society, those who hold the governmental power may use it to legitimate their assertions and to maintain their domination.

Thus the decisions involved in the formulation of definitions of crime and the administration of justice are among the most obvious displays of conflict in any society. Evidence of this fact is not difficult to find in the United States where statistics indicate that the probability of a man's being defined as criminal is strongly correlated to his position in the racial structure. Studies have shown that in consideration of their proportion in the total population, Blacks are arrested between three and four times as often as Whites. Comprising approximately one-tenth of the American population, they account for nearly one-third of the arrests for all offenses. As Wolfgang concludes, based on his research on crime and race in American society, "When crime and color converge, the person is in double jeopardy. To the visible badge of color is added the label of criminal, reinforcing attitudes of prejudice and compounding acts of discrimination."<sup>3</sup>

These compounding acts of discrimination are what we will now focus our attention on in this discussion. Once the racial minority member is arrested and labeled a criminal, he must then be sentenced and that sentence must be administered by the correctional branch of the criminal justice system. It is by looking at the processes involved in these operations that we will be able to more clearly see the consequences of a differential distribution of power and authority on minorities in this country.

Let us consider the proposition introduced earlier that it is those who have the ability to have their interests represented in public policy who regulate the formulation of definitions of crime and the resultant infliction of punishment on those labeled criminal. In the United States, this proposition is illustrated by the fact that although white collar crime is of far greater economic cost to citizens than are crimes of the poor, our prisons are used primarily to punish those offenses which are typically committed by the lower classes (burglary and robbery, for example). The following tables serve to illustrate the disparities in the cost of crime committed by the rich and poor and the subsequent discretion used by the judiciary in sentencing convicted defendants of both groups.

Table 1  
THE ECONOMIC COST OF CRIME (1965)

	Annual Economic Cost in Millions of Dollars
<b>WHITE-COLLAR CRIME</b>	
Embezzlement	\$200
Fraud	1,350
Tax Fraud	100
Forgery	80
<b>CRIMES OF THE POOR</b>	
Robbery	27
Burglary	251
Auto Theft	140
Larceny, \$50 and over	190

Source: Based on data in the President's Commission on Law Enforcement and the Administration of Justice, Task Force Report, *Crime and its Impact*, pp. 44-49.

Table 2  
ALTERNATIVES USED IN SENTENCING  
CONVICTED DEFENDANTS IN THE  
UNITED STATES DISTRICT COURTS (1969)

Offense	Total Convicted Defendants	% Imprisoned	% Probation	% Other	Average Prison Term Served in Months*
Income Tax					
Fraud	502	18.9	66.7	14.3	9.5
Larceny	2,283	37.0	61.2	1.9	15
Selective					
Service Act	900	57.6	41.8	.6	17
Auto Theft	3,791	62.6	36.4	1.0	21
Burglary	254	63.4	36.6	—	28
Robbery	961	92.3	7.6	1	52

Source: Based on data in *Federal Offenders in the United States District Courts, 1969* the Administrative Office of the U.S. Courts, Washington, D.C., p. 47.

\*Source: Federal Bureau of Prisons, *Statistical Report*, 1969 and 1970, p. 140.

The variability in patterns of punishment indicated by the statistics presented in these tables reflects deliberate political decisions which are linked to the interests of that segment of the population most closely controlling those decisions. Embezzlement and income tax

fraud are most often punished by some form of probation or even by non-judicial administrative sanctions. That a very small percentage of white-collar criminals are imprisoned may be explained by the fact that these acts are most often committed by the relatively affluent whose interests and ideology are closely linked to those of the decision-makers.

A major consequence of the use of imprisonment to punish crimes committed primarily by the poor is that we find a disproportionate number of Blacks in American prisons.<sup>4</sup> I have chosen to include several additional tables which are relevant to this part of my discussion, for I feel that an examination of these statistics will enable the reader to more clearly see the concrete impact of judicial decision-making based on such extralegal factors as race. When we look at the data collected in the 1960 census, we find that on any given day, approximately 400,000 persons were incarcerated in our jails, prisons and reformatories. The rates for Blacks are much higher than those for Whites, with discrepancies particularly striking for black men in their 20's. On an average day in 1960, one out of every 116 white men between the ages of 20-24 was serving time in a prison, while for black men in the same age group, one out of every 27 was to be found behind bars. Similar disparities between Blacks and Whites may be found in all age groupings and in both sexes.

Table 3  
INCARCERATION RATES BY RACE, AGE AND SEX

Number of individuals in prisons and jails in the United States on an average day in 1960, for each 100,000 individuals in the relevant population.

AGE	BLACK MEN	WHITE MEN	BLACK WOMEN	WHITE WOMEN
under 20	118	66	15	4
20-24	3,698	864	199	27
25-34	3,876	649	230	21
35-44	2,494	404	144	16
45-64	1,009	239	55	9
65+	200	53	10	3

Source: Based on figures in the special report of the 1960 census, *Inmates of Institutions*, PC (2)-8A, 1963.

Another indication of decision-making involving racial considera-

tions may be seen in the fact that black prisoners as a rule serve longer prison terms before parole than Whites convicted of the same offense. In the next table, data have been collected based on time served by Blacks, Whites and Chicanos in the California prison system. The disparities are often striking. A white man convicted on a marijuana charge served a median time of 26 months, while both Blacks and Chicanos found themselves incarcerated for 36 months on the average.

Table 4  
OFFENSE, ETHNIC GROUP,  
AND TIME SERVED FOR MALE FELONS  
PAROLED FOR THE FIRST TIME

OFFENSE	Median Time Served in Months*			Number of Prisoners		
	WHITE	BLACK	CHICANO	WHITE	BLACK	CHICANO
1967						
All Offenses	26	34	33	2,332	997	619
Manslaughter	41	43	—	31	21	8
Robbery 1st	45	48	44.5	239	142	32
Robbery 2nd	36	36	39	102	83	19
Assault	36	36	35	63	56	29
Burglary 1st	36	41	—	56	24	9
Burglary 2nd	24	23	22	531	171	116
Grand Theft	23	24	23.5	117	54	32
Auto Theft	19	24	21	172	48	25
Forgery & Checks	19	19	17	404	73	35
Rape	31	39.5	—	33	22	12
Opiates	38	48	44	49	47	134
Marijuana	26	36	36	135	120	77

\*No medians are given when there are less than 15 cases.

Source: *California Prisoners, 1968* (Sacramento, Department of Corrections), pp. 85-86.

My analysis of the American correctional system is based on an assumption of the inherently political nature of the entire criminal justice system; likewise, my examination of policies of punishment is set in a framework of political concerns, for I see the policies as having a functional dependence on the given social and political order. There are many persons, however, who disagree with or deny the validity of this perspective. A point of critical importance to this discussion is a look at how the political context of prison in society has been obscured by the portrayal of our institutions as "protecting society"

and "rehabilitating the individual offender."

The major public purposes of the correctional system may be summarized in the restraint of potentially dangerous criminals, deterrence, retribution and rehabilitation. The dominant theoretical assumption among those who would deny the political nature of the correctional system is that the social order is fundamentally stable and just.<sup>5</sup> An understanding of this view is important for it has played a significant role in challenging the punitive orientation of our policies and introducing the therapeutic approach which assumes a medical analogy in dealing with offenders. According to the therapeutic view, persons who are convicted of crimes are automatically assumed to be "sick," therefore in need of treatment. In other words, the "criminal" characteristics of the prisoner must develop within the individual himself. As George Jackson has written: "The textbooks on criminology like to advance the idea that the prisoners are mentally defective. There is only the merest suggestion that the system itself is at fault. . . ." <sup>6</sup>

References to the alleged depravity of the poor and their criminality (inherent in their being "poor") may be found throughout history and have been used from time to time to justify class-based social structures. It has been pointed out by those concerned with this issue that today's penologists and criminologists are more subtle and sophisticated in their approach to the criminal tendencies of the poor.<sup>7</sup> But as we can see in the following statements by Banfield, describing people of the lower classes, behind the facade of humanitarianism is a racist perspective:

feeble . . . suspicious and hostile, aggressive yet dependent . . . no attachment to community, neighbors or friends . . . lives in the slum and sees little or no reason to complain . . . features that make the slum repellent to others actually please him . . . prefers near-destitution without work to abundance with it . . . the morality of the lower-class culture is preconventional, which means that the individual's actions are influenced not by conscience but only by a sense of what he can get away with. . . .<sup>8</sup>

Denials of the political context of correctional policies have been increasingly challenged on the grounds of evidence presented by social and behavioral scientists and by angry protests from the prisoners themselves. Theorists in criminology and penology have characterized our prison system by its diversity of uncoordinated institutions run independently by administrators at the federal, state,

county and municipal levels of our government. In addition to this fragmentation of administration among governmental units at every level, ideological conflicts drawn from diverse historical sources, absence of a conceptual framework and philosophy that would give guidance and meaningful direction to its efforts, fluctuations in public opinion and differences in the quality of administrative leadership have all combined to make the "system" a complicated network of contradicting procedures. The staggering recidivism rates (estimated to be as high as 80%) are evidence of the fact that more often than rehabilitating, our prisons serve to dehumanize and criminalize their populations.

It would appear to one who has studied the policies of the correctional system that the ultimate goal is not rehabilitation, unless that term is defined as conformity to prison life. The National Commission on the Causes and Prevention of Violence concluded that because of the "usually disastrous prognosis" which would accompany a man's incarceration, the safety of the general public has a better chance of being protected by *not* incarcerating the offender in one of our correctional facilities (contrary to popular belief). Rather than placing men in "warehouses of degradation,"<sup>9</sup> the Commission advocated a heavier reliance upon alternatives such as the various forms of post-conviction probation.

Yet our criminal justice system has not altered its patterns of sentencing and still relies heavily upon prisons to punish disproportionate numbers of the poor—especially minority group members. Prisoners, entangled in the web of contradictory procedures, experience in all its intensity the viciousness of society's racism as reflected in the authoritarian prison power structure. Not only have they begun to see through the shallowness and hypocrisy of correctional policies which claim to rehabilitate the offender and protect society, but they have begun to articulate what they perceive to be the true function of the prison in the United States. For minority groups, especially Blacks, this reappraisal is set in a political framework and has serious implications for the entire justice system.

Perhaps the best way to introduce an examination of the views of prisoners (we will focus here on minority group members who have been incarcerated) is to present the analogy which a growing number of inmates are offering—that prison is a metaphor for the larger society and prisoners are "in jail in a jail." Huey Newton supports this view and declares that the only distinction he would make would be to label



one minimum security and the other maximum security. In other words, the only differences between “free” American society and the prison are those of intensity rather than quality. Central to this view is the fact that Blacks and other minorities see the oppressiveness of the prison and the powerlessness of the inmates as a reflection of similar conditions in society in general.

That racism is one of the most pervasive elements of daily existence in most prisons is a fact well-documented in writings by and interviews with both black and white inmates. The prison society is a microcosm of the larger society and, as such, the causes for racism in the institution are essentially the same as they are on the outside. Many prisoners bring racist attitudes with them when they enter, and once inside, the frustration and insecurity caused by the deprivations of incarceration intensify these tensions. However, the racism inmates bring with them does not seem to be the most significant element in the racial tensions of the prison, according to the accounts of inmates of all colors. Rather, they point to the encouragement given these attitudes by guards (overwhelmingly white) through rewards for racist behavior. The guards allegedly urge the white inmates to displace the hatred and anger, which they feel as a result of their incarceration, onto Blacks, Chicanos or other minority group members available as scapegoats. Implicit in the structure of the prison organization is the fact that the approval and support of the guards is important in gaining freedom. Thus, racism is directly related to the survival of the inmate, for if he fails to cooperate with the proddings of a guard, he may find himself serving a longer term than necessary.

This encouragement of racism reflects a desire to prevent the union of inmates across racial lines for the guards view any such interracial solidarity as a direct threat to their control of the prisoners. Through this vicious adaptation of the principle of “divide and conquer,” the guards have systematically encouraged racial animosity. The fact that prison administrators have been unwilling to take decisive action against the encouragement of racial conflict and that they have refused to reexamine the racism implicit in many penal policies has given free reign to such practices. Reports from black and white inmates alike indicate that Blacks are often treated more severely than Whites for the same infraction of rules and that Blacks are put in that section of the prison known as “the hole” more often and for longer periods.

The brutal reality of undisguised racism which confronts the inmate in American prisons has served as fertile grounds for the development of revolutionary ideologies among minority group members. For men such as Malcolm X, Eldridge Cleaver and George Jackson, the time spent in prison was critical in the development of their self-awareness as members of an oppressed class. One black inmate describes this transformation in these words:

While prison is unfit for human shelter and a cruel mockery of the human condition, it nonetheless provides an ideal atmosphere for revolutionary education. Nowhere in society are the contradictions of the Government's system of justice so glaring as they are in prison. In prison, oppression and brutality are not camouflaged by the subtle trappings of political dissent and social concessions. Even in the wretched Black Colonies of America, where oppression runs rampant, at least the oppressor makes an attempt to cover up his bloody trail. But in prison, the barbaric persecution by the oppressor is raw and naked. . . .<sup>10</sup>

The rise of a revolutionary ideology among minority prisoners may be seen as the most significant challenge yet made to the correctional system as it currently functions. In calling attention to the class interests which the system serves, an ever-growing number of militants are involved in articulating prisoner grievances. Prison administrators find they must deal with a new breed of inmates—one which is aware not only of its blackness but also its common oppression. Developments on the outside have influenced the prisoners' thinking to an unprecedented degree. Quick connections are made between their struggles inside and those of oppressed peoples around the world. That they see their imprisonment as the result of an unjust and repressive society is expressed in a letter written by George Jackson: "Very few men imprisoned for economic crimes or even crimes of passion against the oppressor feel that they are actually guilty. Most of today's black convicts have come to understand that they are the most abused victims of an unrighteous order."<sup>11</sup>

Thus the entire basis of the American system of justice is being called into question by black, Chicano and Puerto Rican prisoners. Viewing the penal system as an aspect of the practice of containment on the domestic front, militants have increasingly succeeded in promoting the idea that all Blacks, whatever their crimes, are political prisoners because the "justice" system has dealt with them differently than it has with Whites. Another idea which has caught on among

minorities is that all Third World peoples are American “prisoners of war” in the sense that a racist and white-dominated social, economic and political structure has condemned them, in their blackness and their poverty, to lives of crime. As Jackson wrote: “Black men born in the United States and fortunate enough to live past the age of eighteen are conditioned to accept the inevitability of prison. For most of us, it simply looms as the next phase in a sequence of humiliations.”<sup>12</sup> In a similar tone, he addressed himself to Blacks and declares, “these places were built with us in mind, just as were the project houses, unemployment offices and Bible schools.”<sup>13</sup>

Knowledge that they are being abused combined with seeing imprisonment as merely another form of the oppression has led a growing number of Blacks to the conclusion that rather than owing society a debt and paying it off in prison, it is society that owes them the debt. I agree that the disproportionate number of minority group members in our prisons is a result of political decisions influenced by racial considerations. However, I must admit that I find the notion of “political prisoners” troubling in several respects.

First, most of the criminal offenses committed by Blacks are perpetrated against other Blacks. I see no link between such acts and the advancement of the black liberation struggle. I sense, too, a danger inherent in the use of the term political prisoner. Implicit in the concept is a failure to recognize the need for any penalties or punishment. It obscures the fact that certain forms of behavior, such as murder, would be outlawed in any society. In other words, in the case of Blacks in prison I cannot say that all inmates are innocent of wrongdoing and find themselves behind bars because of their political status.

The fact that there are problems inherent in the use of the term political prisoner is by no means a denial of the profound impact this term has had on inmates across the nation. The growing acceptance of the concept of the political prisoner has serious implications on the organization of prison life itself and on the implementation of traditional policies. For as an ever-increasing number of Blacks come to see the penal system as a device through which the dominant white society seeks to maintain its control—both physical and psychological—resistance to such domination takes on a new significance for the Third World inmate.

It has been documented that it is possible for the black or brown man to do two kinds of time behind bars. The first would involve a com-

promise of one's manhood/womanhood and/or one's blackness in order to do whatever is necessary to get out. The second option is most often chosen by those who are aware of the social, economic and political conditions of Blacks and who are not willing to surrender any portion of their being to the system. Increasingly, Blacks see prison life as one continuous struggle to survive, not only physically but also mentally. And a growing number are willing to serve longer prison sentences and even to sacrifice their lives for their beliefs. Cleaver writes about the danger of losing any sense of self in his *Soul on Ice*: "If I had followed the path laid down for me by the officials, I'd undoubtedly have long since been out of prison—but I'd be less of a man."<sup>14</sup> The organizational structure of the prison is such that it forces definite choices upon the black man who finds it to be more and more necessary to define himself.

The philosophy which surrounds the concept of black political prisoners has had ramifications for prison administrators not only in the control of inmates but also in the implementation of programs classified under the heading of "rehabilitation." Seeing themselves not as criminals but rather as victims, the inmates denounce all attempts to rehabilitate them. Programs categorized as rehabilitative are seen as mechanisms of oppression directed toward the prisoner which are designed to persuade him to alter his basic views regarding himself and society. In his article about criminal justice, legal values and the rehabilitative ideal, Francis Allen states that in the actual administration of penal policy, the consequences of the two supposedly separate orientations of punishment and treatment have not been as disparate as expected.<sup>15</sup> It has been pointed out by many authors that the results of the rehabilitative ideal are often not as humanitarian as had been intended, and the truth of this criticism is supported by the following appraisal of the treatment model by Dr. Thomas S. Szasz, a specialist in the interrelationships of law and psychiatry:

Most of the legal and social applications of psychiatry, undertaken in the name of psychiatric liberalism, are actually instances of despotism. The thesis that the criminal is a sick individual in need of treatment—which is promoted today as if it were a recent psychiatric discovery—is false. Indeed it is hardly more than a refurbishing, with new terms, of the main ideas and techniques of the inquisitorial process. . . . [The deviant] is first discredited as

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a self-responsible human being, and then is subjected to humiliating punishment defined and disguised as treatment.<sup>16</sup>

Prisoners themselves are becoming increasingly vocal in their demands to put an end to rehabilitative policies which undermine the individual's self-image and self-respect. In examining the long list of reforms proposed by the authors of *Struggle for Justice*,<sup>17</sup> I feel the most important is their call for a separation of rehabilitation from punishment within the penal system. They advocate the need for the rehabilitative aspect of incarceration to be voluntary and not coercive. In *Soul on Ice*, Cleaver does not focus his attention on the physical evils of prison such as the beatings or poor sanitary conditions, but rather he stresses what he considers to be the much more serious psychological evils which result from the white administrators' policies of rehabilitation, and he describes how they "played havoc with his mind" during the period of his incarceration. In a statement which is of relevance to Blacks, since the correctional system tries to reshape them in the image of the dominant white society, an ex-convict described the "therapy" he received as:

vicious, attritional. The whole point of the psychological diagnosis is to get the prisoner to go for the fact that he's "sick," yet the statement he's sick deprives him of his integrity as a person. Most prisoners I know would rather be thought bad than mad. They say society may have a right to punish them, but not a hunting license to remold them in its own sick image.<sup>18</sup>

Thus physical degradation is replaced by psychological degradation—in many ways, a much more shattering and destructive experience for the individual to endure. It is hardly surprising that inmates view the concept of rehabilitation with distrust.

Observers of the penal system have noted that the rehabilitative ideal has introduced three new characteristics into the correctional model: individualization, indeterminacy and increased discretionary power. Thus, under the humanitarian goal of "Let the punishment fit the criminal," reformers have introduced the indeterminate sentence which is now firmly established in California. We will look at this instrument of the correctional system to provide a specific example of how the rehabilitative ideal has, in fact, led to more severe penal measures, especially against Blacks and other minority groups.

The philosophy behind the indeterminate sentence is to treat each offender as an individual and to release him whenever, in the opinion

of a review board of professionals, he is "ready." This would mean that he would no longer have to serve time regardless of progress toward rehabilitation. In its actual implementation in California, a defendant is frequently given a sentence of one year to life for a wide variety of offenses. The actual length of time he serves is determined by the Adult Authority which is not required to provide justification for its decision. The inmate is not allowed counsel at his hearing and is not allowed to appeal the decision. Because the length of the sentence is not determined beforehand, the prison administration is able to capitalize on the prisoner's uncertainty by using the indeterminate sentence as an instrument of manipulation and social control of prisoners.

The decision of the Adult Authority involves a consideration of the "attitude" of the inmate and an appraisal of how successfully he has been "rehabilitated." There are no discernible standards on which the Authority relies when making its decisions. In fact, there is a total lack of continuity in the board's expectations, demands and policies from one hearing to another and from member to member. The goals of "adjustment" and "successful rehabilitation" as criteria for the granting of parole are often inaccessible to the Black who is judged by a predominantly white middle-class board. The black inmate appearing before the board is often questioned as to his political beliefs, for example, questioning his views on the Black Panthers. The inmate is thus forced to decide between two undesirable alternatives: He may compromise himself and do whatever he feels is necessary to please the board in order to gain parole, or he may stand firm and refuse to play the game, a step which could quite possibly entail serving a life sentence.

George Jackson, who was incarcerated in California's Soledad facility, wrote that in order for a black man to get parole, he must crawl into the hearing room with resignation clear on his face. The indeterminate sentence, introduced as a humanitarian reform, has turned out to be a potent political weapon in the hands of the administrators and the Adult Authority. Rather than reducing the length of sentences, inmates in California, on the average, spend more time in prison than their fellow inmates across the nation for given offenses. Minority group members are often singled out as easy targets for the use of such discretionary powers in an attempt to reduce their militancy and racial solidarity.

As a result, the demands of prisoners have taken a new form. The revolts which we have witnessed lately have been motivated by something more profound than the traditional structure of the prison which denies the inmate certain physical comforts and needs. As described by a black ex-prisoner, "The demands of prisoners today are essentially the same as those of the Watts and Detroit rioters in the 60's: survival and the elementary necessities of life, adequate and decent food, medical care, educational and trade training opportunities." But beyond that, he said, "they are fighting for human dignity, for empowerment, for self-determination, for political rights—which many believe will lead to the eventual overthrow of the system that enslaves them."<sup>19</sup>

Michael Lipsky has pointed out that protest activity is a political resource which is used by disadvantaged groups to gain political power and influence when more traditional forms of political activity are either unavailable or unsuccessful.<sup>20</sup> The riots and uprisings which have occurred in our major penal institutions may be examined in this framework; for prisoners, who are relatively powerless in the political system, resort to protest as a bargaining tool because it is their only political resource. To understand the use of riots and protest by prisoners, we must look at the failures of past efforts to relieve the oppressive conditions in which they find themselves.

Prior to the 1960's, protests by prisoners were directed usually against the prison system itself; demands were presented to the administrators who, as a rule, ignored them. They did not receive any attention in the outside community, for once convicted on a felony charge, defendants are deprived of their right to vote and most other forms of political activity as well. Forms of activity such as work stoppages and hunger strikes proved relatively ineffective because the prison walls blocked the efforts from receiving outside notice.

Probably the most significant factor in the continuation of the prison administration's considerable freedom to abuse inmates is the fact that the courts have traditionally denied relief to prisoners' grievances by invoking the "hands-off doctrine," which, in effect, maintains that the courts should not interfere with the internal policies of prisons. As expressed in the *Banning v. Looney* decision, "Courts are without the power to supervise prison administration or to interfere with the ordinary prison rules or regulations."<sup>21</sup> Thus the courts have played a substantial role in maintaining the *status quo* and defining

prison officials' power as total in internal affairs.

The Eighth Amendment to the Constitution states that "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted." In the decision in *Trop v. Dulles*,<sup>22</sup> Chief Justice Warren declared that the basic principle underlying this amendment was "nothing less than the dignity of man, and he ruled that punishment can be cruel and unusual even though non-physical. An article appearing in the *Stanford Law Review* interpreted the Chief Justice's remarks in the *Trop* case in this way:

. . . even the most loathsome criminal, justly convicted of a heinous offense by due process of law, has a moral claim upon the society which has condemned him: his humanity must be respected even while he is being punished. The State must not deny what is undeniable: that this man, though condemned, is still inalienably a man. To fail to treat him as a human being is to commit a new crime and to cause the shadow of guilt to fall on those who punish as well as on him who is punished.<sup>23</sup>

Only very recently and very slowly, however, have the courts begun to apply this principle. Perhaps the most important decision in expanding the concept of cruel and unusual punishment has been that made in the case of *Holt v. Sarver* (1970) which declared in a class action that the entire Arkansas penal system, as it operated at that time, constituted cruel and unusual punishment. The decision rested on evidence that inmates had been contracted out for labor to friends of the warden and the parole board, that the system did not employ even one correctional worker, and that it offered no program of rehabilitation in preparation for release back into society.

As more lawyers are becoming involved in prison litigation, victories are slowly being gained. The cases involved deal not only with the issues of cruel and unusual punishment but also with censorship, the right to communicate with the outside and access to the media. In the case of *Fortune Society v. McGinnis*, involving the extension of First Amendment rights to allow an inmate to receive and read literature disapproved by the administration, the court ruled, "Censorship is utterly foreign to our way of life; it smacks of dictatorship. Correctional and prison authorities, no less than the courts, are not above criticism, and certainly possess no power of censorship simply because they have the power of prison discipline."<sup>24</sup>

As slow as efforts by the courts have been to humanize the condi-



tions of our prisons, they far exceed what has been accomplished by state legislatures on the issue of prison reform. Legislatures have been slow to move in this area because of the low visibility and the low status of prisoners in society. An equally important factor in the minimal progress achieved by legislatures is sensitivity to public opinion which is traditionally indifferent or hostile to the fate of prisoners. With an awareness of these attitudes, we find ourselves once again faced with the reality of the politicality of prisons and their function in maintaining the present distribution of power in society.

In the preface to the Official Report of the New York State Special Commission on Attica, the McKay report declares, "The problem of Attica will never be solved if we focus upon the prisons themselves and ignore what the inmates have gone through before they arrive at Attica. The criminal justice system is at least as great a part of the problem of Attica as the correctional facility itself."<sup>25</sup> It is of critical importance that this statement be understood and taken into account if any significant reforms are to occur in the penal system. That the correctional system is inextricably linked to the other units of the criminal justice system is undeniable. To point a finger at the problems of our correctional system is at the same time to imply the short-sightedness and general inefficiency of our courts and law enforcement agencies across the country.

Yet the need for change in our prisons requires more than an understanding of the systemic nature of the criminal justice system. If justice is ever to be more than an unrealized ideal, we must follow the suggestion of Rusche and Kirchheimer, "In order to provide a more fruitful approach to the sociology of penal systems, it is necessary to strip from the social institutions of punishment its ideological veils and juristic appearance and to describe it in its real relationships."<sup>26</sup> That is, we must view the prison system as one of our society's instruments of prejudice and discrimination. *Struggle for Justice* makes explicit the facts that criminal justice is derived from a broader social justice, and that the construction of a just system of criminal justice in a society whose very base in an unequal distribution of status and political and economic power, is a contradiction.

The only solution for the problem of class and race bias in the courtroom or by the police or correctional systems is the eradication of bias from American life. Even with the tighter legal controls we will propose, human judgments will continue to be crucial. Inevitably, decisions as to guilt or innocence will be

contaminated by whatever prejudice and discrimination exists in the broader society.<sup>27</sup>

The number of increasingly sophisticated, militant and politicized inmates entering our prison system is growing, especially among minority group members. That they are aware of the dependence of justice on equality in the larger society may be seen in their protests and demands which no longer focus on the specific deprivations of the prison environment, but encompass attacks on the core assumptions of the "American way of life." Very much aware of the connections between struggles on the inside and those on the outside, the inmates have no illusions about either the seriousness of their cause or the danger they face if they decide to challenge the system. George Jackson wrote, ". . . the future holds no surprises for me. I expect anything, including trouble, especially trouble, considering the times."<sup>28</sup> The United States, as a nation, must also prepare itself for trouble; for the fate of the black or brown man in prison has led to an increased awareness of the vicious ramifications of our policies of discrimination and oppression in the whole society. As we consider the way in which our prisons have become the breeding ground of a revolutionary perspective, perhaps we ought to keep in mind these words of Ho Chi Minh: "When the prison gates open the real dragons will fly out." In the case of minorities in America, the dragons will be a result of our own inhumane and racist policies.

#### NOTES

<sup>1</sup> Ralf Dahrendorf, *Class and Class Conflict in Industrial Society*. Stanford: Stanford University Press, 1959, p. 196.

<sup>2</sup> Richard Quinney, *The Social Reality of Crime*. Boston: Little, Brown and Co., 1970.

<sup>3</sup> Marvin E. Wolfgang and Bernard Cohen, *Crime and Race: Conceptions and Misconceptions*. New York: Institute of Human Relations Press, 1970, p. 3.

<sup>4</sup> Erik Olin Wright, *The Politics of Punishment*. New York: Harper Colophon Books, 1973, p. 31.

<sup>5</sup> Bettina Aptheker, "Social Functions of the Prisons in the United States," in *If they come in the morning*, by Angela Davis. London: Orbach and Chambers, Ltd., 1971, p. 45.

<sup>6</sup> George Jackson, *Soledad Brother: The Prison Letters of George Jackson*. New York: Bantam, 1970, p. 49.

<sup>7</sup> Aptheker in *If they come in the morning*, pp. 45-52.

<sup>8</sup> Edward C. Banfield, *The Unheavenly City: The Nature and Future of Our Urban Crisis*. Boston: Little, Brown and Co., 1970, pp. 53, 62, 112, 122, 163 and 211 respectively.

<sup>9</sup> Ramsey Clark, *Crime in America*. New York: Pocket Books, 1971, p. 193.

<sup>10</sup> Alfred Hassan, quoted in *Maximum Security: Letters from Prison*. New York: E. P. Dutton and Co., p. 217.

<sup>11</sup> George Jackson, *Soledad Brother*, p. 30.

<sup>12</sup> *Ibid.*, p. 9.

<sup>13</sup> *Ibid.*, p. 114.

<sup>14</sup> Eldridge Cleaver, *Soul on Ice*. New York: Dell Publishing Co., 1968, p. 17.

<sup>15</sup> Francis Allen, "Criminal Justice, Legal Values and the Rehabilitative Ideal," in *The Journal of Criminal Law, Criminology and Police Science*, 50, Sept.-Oct., 1959, pp. 226-232.

<sup>16</sup> Dr. Thomas S. Szasz, quoted in *Kind and Usual Punishment*, by Jessica Mitford. New York: Knopf, 1973, p. 96.

<sup>17</sup> American Friends Service Committee, *Struggle for Justice*. New York: Hill and Wang, 1971.

<sup>18</sup> Quoted in Mitford, *Kind and Usual Punishment*, p. 104.

<sup>19</sup> *Ibid.*, p. 235.

<sup>20</sup> Michael Lipsky, "Protest as a Political Resource," in the *American Political Science Review*, 62, Dec. 1968, pp. 1144-58.

<sup>21</sup> *Banning v. Looney*, 213 F. 2d 771 (1954).

<sup>22</sup> *Trop v. Dulles*, 356, U.S. 86, 100 (1958).

<sup>23</sup> "Revival of the Eighth Amendment: Development of Cruel Punishment Doctrine by the Supreme Court," 16, *Stanford Law Review*, 966-1000, 1964.

<sup>24</sup> *Fortune Society v. McGinnis*, 319 F. Supp. 901, 905 (1970).

<sup>25</sup> *Attica: The Official Report of the New York State Special Commission on Attica*. New York: Bantam Books, 1972, p. xix.

<sup>26</sup> Georg Rusch and Otto Kirchheimer, *Punishment and Social Structure*. New York: Columbia University Press, 1939, p.

<sup>27</sup> *Struggle for Justice*, p. 13.

<sup>28</sup> George Jackson, *Soledad Brother*, p. 93.